

APPEAL NO. 010269

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 5, 2001, a hearing was held. On the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury, and that the claimant had disability from October 16, 2000, through the date of the hearing.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable injury. The claimant had the burden to prove that he sustained damage or harm to the physical structure of his body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The appellant (self-insured) contends that the hearing officer erred in refusing to hold the record open, to allow the self-insured additional time to obtain evidence in support of its position that the claimant suffered an idiopathic fall. Specifically, the self-insured sought to obtain medical records regarding treatment that the claimant received for migraines 16 years prior to the current injury. It is uncertain, however, what the records would establish, if anything, or whether the records, once received by the self-insured, would be offered into evidence. Under the circumstances, we cannot conclude that the hearing officer abused her discretion in closing the record following the hearing. Additionally, in view of the hearing officer's rejection of the self-insured's theory of the case, we cannot conclude that the hearing officer's refusal to hold the record open harmed the self-insured's case in any way.

Disability

The hearing officer did not err in determining that the claimant had disability from October 16, 2000, through the date of the hearing. Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 000303, decided March

29, 2000. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge